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Our File No.: 113639

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Kathleen McKenna, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

FMS Investment Corp.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Kathleen McKenna, individually and on behalf of all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against FMS Investment Corp. (hereinafter referred to as “*Defendant*”), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

3. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

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PARTIES

5. Plaintiff Kathleen McKenna is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

7. On information and belief, Defendant FMS Investment Corp., is an Illinois Corporation with a principal place of business in Cook County, Illinois.

8. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

9. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

10. Defendant alleges Plaintiff owes a debt (“the Debt”).

11. The Debt was primarily for personal purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

12. Sometime after the incurrence of the Debt, Plaintiff fell behind on payments owed.

13. Thereafter, at an exact time known only to Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.

14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated January 26, 2017. (“**Exhibit 1.**”)

15. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

16. The Letter states, “Your account balance may be periodically increased due to the addition of accrued interest or other charges as provided in the agreement with the original creditor or as otherwise provided by Federal and/or State Law.”

17. The Letter sets forth an interest charge of \$191.17.

18. The Letter sets forth “fees and costs” of \$1,720.74

19. The Letter fails to indicate the minimum amount Plaintiff owed at the time of the Letter.

20. The Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Letter.

21. The Letter fails to provide information that would allow Plaintiff to determine

what Plaintiff will need to pay to resolve the debt at any given moment in the future.

22. The Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

23. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

24. For instance, the Letter fails to indicate the applicable interest rate.

25. For instance, the Letter fails to indicate the date of accrual of interest.

26. For instance, the Letter fails to indicate the amount of interest during any measurable period.

27. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of “fees and costs” owed.

28. For instance, the Letter fails to indicate the date such fees and costs will be added.

29. For instance, the Letter fails to indicate the amount of fees and costs during any measurable period.

30. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees, costs and interest that may cause the amount stated to increase.

31. The Letter fails to state whether interest, fees and costs are accruing.

32. The Letter fails to state that the creditor will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

33. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Letter.

34. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

35. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

36. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt

was static.

37. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

38. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

39. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

40. The Letter, because of the aforementioned failures, violates 15 U.S.C. §§ 1692e and 1692g. *See Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

CLASS ALLEGATIONS

41. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt by sending a collection letter which stated, “Your account balance may be periodically increased due to the addition of accrued interest or other charges as provided in the agreement with the original creditor or as otherwise provided by Federal and/or State Law,” without providing information sufficient to allow the least sophisticated consumer to determine the actual amount of the debt as required by the FDCPA, from one year before the date of this Complaint to the present

42. This action seeks a finding that Defendant’s conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

43. Defendant regularly engages in debt collection.

44. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts by sending a collection letter which stated, “Your account balance may be periodically increased due to the addition of accrued interest or other charges as provided in the agreement with the original creditor or as otherwise provided by Federal and/or State Law,” without providing information sufficient to allow the least sophisticated consumer to determine the actual amount of the debt as required by the FDCPA..

45. Plaintiff’s claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over

any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

46. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

47. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

48. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiff as Class Representative of the Class, and Plaintiff's attorneys as Class Counsel; and
- c. Find that Defendant's actions violate the FDCPA; and
- d. Grant damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Grant Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and

- f. Grant Plaintiff's costs; together with
- g. Such other relief that the Court determines is just and proper.

DATED: August 6, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

Craig B. Sanders, Esq.

100 Garden City Plaza, Suite 500

Garden City, New York 11530

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Fax: (516) 706-5055

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Attorneys for Plaintiff

Our File No.: 113639

PO Box 1115
Charlotte, NC 28201-1115

2



KATHLEEN MCKENNA
117 STANLEY DR
CENTEREACH, NY 11720-2233

Principal Balance	\$6,878.42
Interest	\$191.17
Penalty	\$0.00
Fees and Costs	\$1,720.74
Total Balance	\$8,790.33
Account Number	██████████ 1341

January 26, 2017

Dear Kathleen Mckenna,

This notice regarding your U.S. Department of Education account, is from FMS Investment Corp. (FMS). The current creditor U.S. Department of Education (ED) has placed your account with us for collection.

This notice is to remind you, pursuant to your authorization on 00/00/00, FMS Investment Corp. (FMS) will process your card payment in the amount of \$5.00 on 02/05/17.

If you have any questions/concerns regarding this transaction, please contact FMS Investment Corp. (FMS) at 877-291-8405. Please allow one (1) business day of the processing date above for all payment changes.

Your account balance may be periodically increased due to the addition of accrued interest or other charges as provided in the agreement with the original creditor or as otherwise provided by Federal and/or State Law.

FMS Investment Corp. (FMS) office hours are: 8 a.m. - 9 p.m. Monday - Thursday and 8 a.m. - 5 p.m. Friday (Central Standard Time). You may write to us at the address listed below or call us at the telephone number provided below. Do not send a payment to this address.

FMS Investment Corp. (FMS)
PO Box 1423
Elk Grove Village, IL 60009-1423

Toll Free Number: 877-291-8405
Toll Free Facsimile: 800-880-4583
Calls may be recorded and/or monitored for quality assurance.

This communication is from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

Please contact Jason Barnes or any of our other representatives at 877-291-8405.

CUSTOMER FEEDBACK – To provide feedback on our services, please send an e-mail to CustomerComments@fmsdc.com or call toll free at 866-430-9331.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION



We are required under state law to notify consumers of the following rights. This list does not include a complete list of the rights consumers have under state and federal law.

Notice to Arizona Residents: FMS Investment Corp. (Debt Collection), 2394 E Camelback RD, Phoenix, AZ 85016.

Notice to California Residents: The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov. Nonprofit credit counseling services may be available in the area.

Notice to North Carolina Residents: This collection agency is licensed by the North Carolina Department of Insurance; Permit Numbers: 4018, 105769, 112145 and 112614.

Notice to Colorado Residents: FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR. A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. Colorado office address and phone number: FMS Investment Corp., Attn: Irvin Borenstein, 13111 East Briarwood Ave., Centennial, CO 80012 (303-309-3839).

Notice to Massachusetts Residents: NOTICE OF IMPORTANT RIGHTS: You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked or delivered within seven days of such request. You may terminate this request by writing to the debt collector.

Notice to Minnesota Residents: This collection agency is licensed by the Minnesota Department of Commerce.

Notice to New York City Residents: This collection agency is licensed by the New York City Department of Consumer Affairs, License No: 1187280.

Notice to Oregon Residents: FMS Services, 388 State Street, Suite 420, Salem, OR 97301.

Notice to Tennessee Residents: This collection agency is licensed by the Tennessee Collection Service Board of the Department of Commerce and Insurance.

If you need to send us written correspondence to our physical address, please send to 1701 Golf Road, Suite 2-150, Rolling Meadows, IL 60008.



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
KATHLEEN MCKENNA
(b) County of Residence of First Listed Plaintiff SUFFOLK
(c) Attorneys (Firm Name, Address, and Telephone Number)
BARSHAY SANDERS, PLLC
100 Garden City Plaza, Ste 500, Garden City, NY 11530
(516) 203-7600

DEFENDANTS
FMS INVESTMENT CORP.
County of Residence of First Listed Defendant COOK
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question (U.S. Government Not a Party)
O 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF O 1 DEF O 1
Citizen of Another State O 2 O 2
Citizen or Subject of a Foreign Country O 3 O 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: O 110 Insurance, O 120 Marine, O 130 Miller Act, O 140 Negotiable Instrument, O 150 Recovery of Overpayment & Enforcement of Judgment, O 151 Medicare Act, O 152 Recovery of Defaulted Student Loans (Excludes Veterans), O 153 Recovery of Overpayment of Veteran's Benefits, O 160 Stockholders' Suits, O 190 Other Contract, O 195 Contract Product Liability, O 196 Franchise
REAL PROPERTY: O 210 Land Condemnation, O 220 Foreclosure, O 230 Rent Lease & Ejectment, O 240 Torts to Land, O 245 Tort Product Liability, O 290 All Other Real Property
TORTS: PERSONAL INJURY: O 310 Airplane, O 315 Airplane Product Liability, O 320 Assault, Libel & Slander, O 330 Federal Employers' Liability, O 340 Marine, O 345 Marine Product Liability, O 350 Motor Vehicle, O 355 Motor Vehicle Product Liability, O 360 Other Personal Injury, O 362 Personal Injury - Medical Malpractice
PRISONER PETITIONS: Habeas Corpus: O 463 Alien Detainee, O 510 Motions to Vacate Sentence, O 530 General, O 535 Death Penalty
Other: O 540 Mandamus & Other, O 550 Civil Rights, O 555 Prison Condition, O 560 Civil Detainee Conditions of Confinement
FORFEITURE/PENALTY: O 625 Drug Related Seizure of Property 21 USC 881, O 690 Other
LABOR: O 710 Fair Labor Standards Act, O 720 Labor/Management Relations, O 740 Railway Labor Act, O 751 Family and Medical Leave Act, O 790 Other Labor Litigation, O 791 Employee Retirement Income Security Act
IMMIGRATION: O 462 Naturalization Application, O 465 Other Immigration Actions
BANKRUPTCY: O 422 Appeal 28 USC 158, O 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: O 820 Copyrights, O 830 Patent, O 840 Trademark
SOCIAL SECURITY: O 861 HIA (1395ff), O 862 Black Lung (923), O 863 DIWC/DIWW (405(g)), O 864 SSID Title XVI, O 865 RSI (405(g))
FEDERAL TAX SUITS: O 870 Taxes (U.S. Plaintiff or Defendant), O 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: O 375 False Claims Act, O 400 State Reapportionment, O 410 Antitrust, O 430 Banks and Banking, O 450 Commerce, O 460 Deportation, O 470 Racketeer Influenced and Corrupt Organizations, O 480 Consumer Credit, O 490 Cable/Sat TV, O 850 Securities/Commodities/Exchange, O 890 Other Statutory Actions, O 891 Agricultural Acts, O 893 Environmental Matters, O 895 Freedom of Information Act, O 896 Arbitration, O 899 Administrative Procedure Act/Review or Appeal of Agency Decision, O 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
O 1 Original Proceeding
O 2 Removed from State Court
O 3 Remanded from Appellate Court
O 4 Reinstated or Reopened
O 5 Transferred from Another District (specify)
O 6 Multidistrict Litigation - Transfer
O 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC §1692
Brief description of cause: 15 USC §1692 Fair Debt Collection Practices Act Violation

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes O No

VIII. RELATED CASE(S) IF ANY
(See Instructions)
JUDGE DOCKET NUMBER

DATE August 7, 2017 SIGNATURE OF ATTORNEY OF RECORD /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Craig B. Sanders, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1. Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: NO
2. If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
 Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
 Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s Craig B. Sanders

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Kathleen McKenna, individually and on behalf of all others similarly situated)	
<i>Plaintiff(s)</i>)	
v.)	Civil Action No.
FMS Investment Corp.)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
FMS Investment Corp.
1701 Golf Road , Suite 2-150
Rolling Meadows, Illinois 60008

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States, or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

BARSHAY SANDERS PLLC
100 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, NY 11530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FMS Investment Corp. Accused of Sending Non-Compliant Collection Letters](#)
